

HOUSE BILL REPORT

ESSB 6251

As Passed House:
February 27, 2012

Title: An act relating to advertising commercial sexual abuse of a minor.

Brief Description: Regulating advertising of commercial sexual abuse of a minor.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kohl-Welles, Delvin, Eide, Chase, Pflug, Conway, Kline, Ranker, Stevens, Fraser, Regala, Nelson, Roach and Frockt).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/15/12, 2/21/12 [DP].

Floor Activity:

Passed House: 2/27/12, 96-0.

Brief Summary of Engrossed Substitute Bill

- Creates the offense of Advertising Commercial Sexual Abuse of a Minor.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

Staff: Sarah Koster (786-7303).

Background:

Chapter 9.68A of the Revised Code of Washington contains the following offenses relating to Commercial Sexual Abuse of a Minor: Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, Promoting Travel for Commercial Sexual Abuse of a Minor, and Permitting Commercial Sexual Abuse of a Minor.

Under current law, a person is guilty of Commercial Sexual Abuse of a Minor if:

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- he or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;
- he or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or
- he or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

A person is guilty of Promoting Commercial Sexual Abuse of a Minor if he or she knowingly advances Commercial Sexual Abuse of a Minor or profits from a minor engaged in sexual conduct.

A person commits the offense of Promoting Travel for Commercial Sexual Abuse of a Minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be Commercial Sexual Abuse of a Minor or Promoting Commercial Sexual Abuse of a Minor, if occurring in this state.

A person is guilty of Permitting Commercial Sexual Abuse of a Minor if, having possession or control of premises which he or she knows are being used for the purpose of Commercial Sexual Abuse of a Minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

Summary of Bill:

A person commits the offense of Advertising Commercial Sexual Abuse of a Minor if he or she knowingly publishes, disseminates, or displays; or causes directly or indirectly to be published, disseminated, or displayed, any advertisement for a commercial sex act that is to take place in the State of Washington and that includes the depiction of a minor.

To be actionable, the advertisement must contain a depiction of a minor, meaning a photograph or reproduction of a photograph (including a print, negative, slide, digital image, motion picture, or videotape).

Advertising Commercial Sexual Abuse of a Minor is a class C felony.

It is not a defense to a prosecution under this section that the defendant did not know the age of the minor.

However, it is a defense that the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring governmental identification of the minor depicted in the advertisement and did not rely solely on oral or written representations or the minor's appearance. This defense must be proved by a preponderance of the evidence. To invoke this defense, the defendant must produce a record of the identification used to verify the age of the person depicted in the advertisement.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is part of a package of bills on the tenth anniversary of the first sex trafficking bill in the Washington Legislature. This was the most difficult to craft to make sure that it does not impede constitutional business speech. The newest version was approved by the Allied Daily Newspapers, the American Civil Liberties Union, and other stakeholders. This is a test for states across the country. This has to do with the selling of children online to be adult escorts. The mail-order bride industry started this whole thing. We need to look at the root causes: migration, immigration, and international trade agreements. This is a human rights issue. If you really want to prevent human trafficking, you must go beyond prosecution to prevention.

Advertisers should be required to maintain records, not just be allowed a defense if they can provide a record, and be required to report postings of girls who are found to be underage. The girls are forced to post their own pictures, so pimps do not get their hands dirty. The vice squad does not have the funds to do stings on Backpage.com. There is no price to evaluate the costs of society. Photo identification may prevent this from happening. This bill will save the officers, the children, and the parents the costs of remedying the offenses. Backpage will not take action on its own. It is necessary to compel Backpage and hold them accountable. A single law will never be enough, but it will provide the community with help. This bill will help the prosecutors and the police and reduce the harm of sexual exploitation of youth. This bill was carefully crafted to be defensible in federal court. Changes should be made cautiously to make sure it does not defeat itself. This bill is important because it no longer requires that a sex act occur before an arrest. This will help prosecution.

(Opposed) None.

Persons Testifying: Senator Kohl-Welles, prime sponsor; Nacole Svendgard; Velma Veloria and Sutapa Basu, University of Washington Women's Center; Emma Catague, Asian and Pacific Islander Women and Family Safety Center; Rose Gunderson, Washington Engage; Joel Banks, Richard McMartin, and Andy Conner, King County Sheriff's Office; Craig Engelking and Jim Pugel, City of Seattle Police Department; Chris Johnson, Office of the Attorney General; Seth Dawson, Youth Care and Child Advocacy Centers; and Rowland Thompson, Allied Daily Newspapers.

Persons Signed In To Testify But Not Testifying: None.